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8 Attorneys for Nugget Construction Co.  
9 Inc. and USF&G, Defendants

10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

12 UNITED STATES OF AMERICA for the use of )  
13 NORTH STAR TERMINAL & STEVEDORE )  
14 COMPANY, d/b/a NORTHERN STEVEDORING )  
15 & HANDLING, and NORTH STAR TERMINAL & )  
16 STEVEDORING COMPANY, d/b/a Northern )  
17 Stevedoring & Handling, on its own behalf, )

18 Plaintiff, )

19 and )

20 UNITED STATE OF AMERICA for the use of )  
21 SHORESIDE PETROLEUM INC., d/b/a Marathon )  
22 Fuel Service, and SHORESIDE PETROLEUM )  
23 INC., d/b/a Marathon Fuel Service, on its own )  
24 behalf, )

25 Intervening Plaintiffs, )

and )

METCO, INC., )

Intervening Plaintiff, )

vs. )

NUGGET CONSTRUCTION INC.; SPENCER )  
ROCK PRODUCTS INC.; UNITED STATES )  
FIDELITY AND GUARANTY COMPANY; and )  
ROBERT A. LAPORE, )

Defendants. )

No. 3:98-cv-00009-TMB

NUGGET'S RESPONSES TO  
PLAINTIFF'S OBJECTIONS  
TO ITS EXHIBITS

1 Defendant Nugget Construction, Inc. hereby responds to the objections made by  
2 plaintiff North Star to Nugget's proposed exhibits:  
3

4 Response to Objections to Exhibits F and G: Exhibits F and G are business  
5 records of Northrim Bank (Spencer Rock Products' bank during the project) and Nugget  
6 will call a bank witness to confirm the record's admissibility or, alternatively, establish  
7 the admissibility of the records through FRE 902(11). To the extent the business  
8 records contain information from Mr. LaPore, they are not hearsay as they are  
9 admissions of a party-opponent per FRE 801(d)(2). The relevance of ownership of  
10 SRP, represented condition of the equipment, and duration of lease are relevant to  
11 issues raised by North Star concerning the alleged control over SRP by Nugget and the  
12 alleged motivations therefore. Moreover, information contained in this document may  
13 be used to undermine the credibility of Mr. LaPore, depending on his testimony.  
14

15  
16 Response to Objection to Exhibit H. Nugget believes Exhibit H is a document  
17 prepared by Mr. LaPore and intends to use Mr. LaPore to authenticate the document.

18 Response to Objection to Exhibit J. Nugget agrees that page 5 should be  
19 removed from the exhibit.  
20

21 Response to Objection to Exhibit AO. This exhibit is a letter sent from North  
22 Star's former attorney to Spencer Rock Products' former attorney. Nugget intends to  
23 use Mr. LaPore to authenticate the document. The document is not hearsay within  
24 hearsay as it reflects communications between agents of party-opponents per FRE  
25

1 801(d)(2). The exhibit is relevant insofar as the last paragraph on page 1 is indicative of  
2 possible witness bias, *i.e.*, Plaintiff North Star and Defendant Spencer Rock Products  
3 cooperating to focus liability on Nugget.

4  
5 Response to Objection to Exhibit AP. This exhibit is the settlement agreement  
6 between Nugget and Spencer Rock Products resolving their State Court litigation. The  
7 LaPore affidavit is irrelevant to the issues of this case, but Nugget will attempt to locate  
8 and provide a copy of the affidavit. The document is relevant to establish that Spencer  
9 Rock Products (and similarly North Star) has released any right to complain about the  
10 validity of the Nugget set-offs and backcharges. The document also confirms the arms-  
11 length nature of the relationship between Nugget and Spencer Rock Products. The  
12 document does not violate FRE 408 because North Star has placed the scope of the  
13 settlement agreement in issue when it asserts Nugget's set-offs and backcharges were  
14 improper, or if it argues that Nugget still owes money to Spencer Rock Products.  
15

16 Response to Objection to Exhibit AS. Exhibit AS is a summary allowed pursuant  
17 to FRE 1006. The summary is based on trial exhibits relating to Spencer Rock Products  
18 anticipated expenditures, and the modifications relating to those expenditures. Nugget  
19 intends to use Mr. LaPore to authenticate and verify this summary.  
20

21 Response to Objection to Exhibit BB. Exhibit BB is an admission of a party-  
22 opponent per FRE 801(d)(2). It is relevant insofar as it establishes North Star's own  
23 attorney characterized the contractual relationship as being between North Star and  
24 Spencer Rock Products, not Nugget.  
25

1           Response to Objection to Exhibit BC. Exhibit BC is a pertinent portion of the  
2 equipment blue book prepared by DataQuest. Nugget (and presumably North Star)  
3 personnel can authenticate and verify this document. It is relevant to rebut North Star's  
4 claim for lost equipment earnings in connection with its tortuous interference claim and  
5 reflects rates as of the end of 1997 and 1998, the project being performed in 1997.  
6

7           Response to Objection to Exhibit BE. Exhibit BE is a selected provision of the  
8 prime contract between the Government and Nugget. Given the voluminous nature of  
9 the contract, Nugget believes only providing the relevant portions of the contract is  
10 appropriate.  
11

12           Response to Objection to Exhibits BP, BQ and CH. Exhibits BP, BQ and CH are  
13 notes believed to be taken by Randy Randolph setting forth discussions involving Bob  
14 LaPore. The notes are either existing statements of intent (admissible under FRE  
15 803(3)), a business record (admissible under 803(6)), or a present sense impression  
16 (admissible under 803(1)). The information relates to Nugget's expectations of Spencer  
17 Rock Products' performance and the relationship between Nugget and Spencer Rock  
18 Products, including the need to enter into the support agreement and the charges  
19 arising therefrom. The information also bears upon the credibility of Mr. LaPore (whose  
20 statements are admissible as statements by a party-opponent).  
21

22           Response to Objections to Exhibit CO. Exhibit CO is notes believed to be taken  
23 by Randy Randolph. The notes are a business record (admissible under 803(6)), or are  
24 a present sense impression (admissible under 803(1)). The information contained in  
25

1 the notes related to Spencer Rock Products' equipment available for the project and  
2 therefore relate to Spencer Rock Products' performance.

3 Response to Objections to Exhibit CY. Exhibit CY is Robert Fox's project diary, a  
4 business record per FRE 803(6) that will be verified and authenticated by Mr. Fox. Mr.  
5 Fox's project diary includes references to time that he spent at the Spencer Pit and what  
6 steps Nugget took to increase production—which relates to the reasonableness of  
7 Nugget's actions and their alleged "control" over Spencer Rock Products.  
8

9 Response to Objections to Exhibit DE. Exhibit DE is a summary allowed  
10 pursuant to FRE 1006. The summary is of COE payments and Nugget payments based  
11 on unobjectionable business records (including COE progress payment records and  
12 Nugget statements of charges) and will be verified by Nugget personnel. North Star  
13 incorrectly characterizes Nugget's motion in limine as limiting evidence of withholding;  
14 the Nugget motion actually seeks to preclude North Star stating that the withholdings  
15 were not proper.  
16

17 Response to Objections to Exhibit DP. Exhibit DP is pertinent portions of Greg  
18 Poynor's business diary, a business record per FRE 803(6) or existing statement of  
19 intent per FRE 803(3). Mr. Poynor will verify and authenticate Exhibit DP is his diary.  
20 The diary was previously provided to North Star in redacted form without objection (the  
21 redactions are for unrelated projects) and the entries reflect Nugget's relationship with  
22 Spencer Rock Products and Spencer's performance, both of which are relevant to this  
23 dispute.  
24  
25

1           Response to Objections to Exhibit DZ. Exhibit DZ is a summary printout of costs  
2 (a Nugget business record) that will be authenticated and verified by Greg Poynor.  
3 Once again, North Star incorrectly characterizes Nugget's motion in limine as limiting  
4 evidence of withholding; the Nugget motion actually seeks to preclude North Star stating  
5 that the withholdings were not proper.  
6

7 Dated: July 13, 2007

8 OLES MORRISON RINKER & BAKER LLP  
9 Attorneys for Nugget Construction Inc. and  
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CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of July, 2007, a true and correct copy of the foregoing was served electronically on:

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